Supreme Court, U.S.
FILED

05-304 MAY 10 2005

No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

REBECCA LORUSSO-SMITH

V.

GEORGIA DEPARTMENT OF CORRECTIONS,
et al.

PETITION FOR WRIT OF CERTIORARI
11th. Circuit Court of Appeals

Rebecca Lorusso - Smith
Appellant - PRO-SE
386183 G-1
Lee-Arrendale State Prison
P.O. Box #709 Alto, Georgia
30510-0709

QUESTIONS

1) Was Not *Hope v. Pelzer* supposed to **end** the lower courts "granting of credibility" especially to Prison officials which they still do with impunity, **ignoring** the chastisement by the United States Supreme Court?

2) Does a prisoner who exhaustively fights purported retaliation of her First Amendment Rights by dint of her sheer effort to do so, thereby unwittingly prove that they were not violated?

3) Was it proper for the Appeals Court to ignore a pattern of overwhelming proof Georgia systematically retaliates toward litigants? Sister Appeals Courts have recognized acts against single individuals. The Doctrine of Continuing Violations proves Civil Rights are still denied on a rising scale.

4) Can Constituitional Rights be subject to a mere superficial look with the attitude of "looks alright to me" assessment. Did not *Hope* dictate otherwise? Plain error review using Rule 52 (b) did not satisfy in this case. It was haphazard. Has not this affected and denied fairness, integrity, and a proper public perception of judicial proceedings?

5) Can a prison maintain inmate smoking and not control ETS for C.O.P.D. and Asthmatic inmates and not be in violation of : Americans with Disabilities Act ; Rehabilitation Act ; and the Civil Rights of Institutionalized Persons Act?

6) Prisoners doing long time in Georgia are systematically denied adequate medical care, proper nutrition, and consistent aging - care needs? In *Zwickler* this Court stated it is the duty of all federal courts to guard, enforce, protect every right granted or secured by the Constitution.

7) To threaten speech and access to the courts transcends Constitutional limitations or State power. Does not the First Amendment reserve this from official's control.?? Is this not *Chill?*

8) Should a severly disabled, diabetic, 66 year old prisoner be locked-down for seeking to avoid **amputation** of feet and limbs? Can Hearing-Impaired prisoner be mocked and humiliated for not being able to hear, and refusal to allow repairs and batteries for Hearing Aids?

9) Can the prison receive millions of Federal Government dollars yet retaliate for protest, grievances, and whistleblowing litigants?

Can Americans with Disibilities Act guaranteed and already given rights, be denied for First Amendment use ?

10) Was not *Hope* and more a message from this Supreme Court for the 11th. Circuit to cease the "put-down" of an inmate and BLIND FAITH in public officials and their mendacity ?

11) Federal Rules of Evidence 106 is violated when one party introduces in evidence **perjury** and the other party cannot tell of the perjury, which should in fairness be considered contemporaneously with it. Is not this helping public officials use misleading deletions or misrepresenting issues? This is in fact reinforcing the testimony of a government witness.

12) Can Appellant be denied Discovery with random, pat, peurile, and "off-the-wall"comments then see the fact she received No Discovery be used against her by the District Judge and the 11th. Circuit? The same agency that denied Discovery to Lorusso was found in **Contempt** of a Federal Court -by - Northern District Senior Judge Marvin Schoob.

13) Can the 11th. Circuit Court of Appeals ignore a pattern (read M.O.) that offers overwhelming proof, day after day, deed after

deed, that the Georgia Prison System will systematically retaliate against litigants? A sister Appeals Court can rule, "A Continuing Violation may ... be established ... by demonstrating a series of related acts against a single individual, one or more of which falls within the limitation period." Should not the Supreme Court settle the matter since on an average in America prison guards are retaliating daily to some 15,000 inmates, and this Court should decide the fate of a Doctrine of Continuing Violations which proves Civil Rights are still denied?

14) The Doctrine of Continuing Violations should be a threshold matter to this Supreme Court because a plethora of diverse approaches are churned out that mean the 11th.Circuit has precluded the sort of reflection and open Collegial consultation that ought to be part and parcel of deciding an appellate case. The 11th. Circuit seems to believe the Supreme Court decided *Hope* as a novelty and it can still side with public officials and just let inmates stew in extremely risky and very unconstitutional prison environments. Can the 11th Circuit condemn inmates by placing all

its faith and trust in a highly suspect Georgia Department of Corrections?

15) Should the Constitutional Rights of Lorusso be subject to a mere superficial look when these enumerated Rights at stake are hardly Vindicated by such a "looks alright to me" assessment? Does the dragging of collective judicial feet insure *Hope* is not 100% held as a mandated precedent? Has plain error denied Lorusso a Constitutionally-Mandated process and the outcome of that process (**jury verdict**) cannot be known until the process actually takes place? Does this plain error satisfy the Affecting Substantial Rights prong of Rule 52 (b)? Will the burden on the judicial system be reduced if plain error review is so haphazard, like an English game of darts? Not utilizing the Doctrine of Continuing Violations, in fact totally ignoring it and its sister circuit court rulings, the 11th. Circuit has seriously affected the fairness, integrity, and public reputation of judicial proceedings, and denied Lorusso substantial Rights. Is not this equated with causing a **"Miscarriage of Justice"** ?

16) Can the Americans with Disabilities Act Accessibility

Guidelines for Buildings and Facilities issued by the United States Archetectural and Transportation Barriers Compliance Board as set forth in the Federal register [ADAAG] be denied all the crippled, disabled, and handicapped inmates by the Georgia Department of Corrections and the State of Georgia.? Can theFederal Fair Housing Amendments Act of 1988 be denied as to no practical terrain or characteristics in accordance with Public Law 100 - 430? Light switches, grab-bars, wall-bars, electrical outletsseats, safe lockers, inadequate lighting (one 60 watt bulb) are not easily accessible or available?

United States Court of Appeals
Eleventh Circuit.

Appeal Number: 04-13338-DD

Certificate of Interested Persons

1) BAKER, Thurbert - Attorney General.

2) BROWN, Peter - State Attorney.

3) CHASE, Alexis - Warden at Washington State Prison.

4) DOCTOR, James - Former Facilities Director.

5) Georgia Department of Corrections.

6) GRANT, Rudy - Counselor.

7) JONES, Bertha - Former acting Warden of Care & Treatment.

8) LANTHRIP, Kathy - Deputy Warden of Care & Treatment.

9) LEONARD, Gregory - Clerk, Middle District Court.

10) MCBRIDE, Craig, Captain at W.S.P.

11) MICKENS, Sue - Counselor.

12) MOLTON, Debbie - Deputy Warden of Administration.

13) RINER, Garland - Deputy Warden of Security.

14) ROGERS, Michael - Medical Doctor at W.S.P.

15) ROYAL, C. Ashley - Judge, District Court.

16) SESSIONS, Emma - Former Warden at W.S.P.

17) SIKES, Jimmy - Regional Director for GDC (Over Chase.)

18) TINKLER, Wm. - State Attorney.

19) WILEY, CO-2 - Mail Room Clerk, W.S.P.

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UNITED STATES SUPREME COURT

Table of Citations.

1) Americans with Disabilities Act = 42 U.S.C. Section 12102

(a) 42 U.S.C. Section 12132

2) *Allen v. Iranon,* 99 F. Supp 2d 1216, upheld 283 F.3d 1070

(9th. Cir. 2002)

3) *Anderson v. Creighton,* 483 U.S. 635, 640, 107 S.Ct.

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4) *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247 - 48,

106 S. Ct. 2505 (1986)

5) *Anthony v. County of Sacramento Sheriff's Dept.,* 845

Supp. 1396, 1402, (E.D.Cal. 1994)

6) *Bender v. Southland Corp.,* 749 F.2d 1205, 1210 - 11 (6th.

Cir.1984)

7) *Boag v. MacDougall,* 434 U.S. 364, 365, 102 S.Ct. 700

(1982)

8) *Bounds v. Smith,* 430 U.S. 817, 828, 97 S.Ct. 1491

(1977)

9) *Bridges v. Russell,* 757 F.2d 1155 (11th. Cir. 1985)

10) *Bruce v. Yist,* 351 F.3d 1283, 1288, (9th. Cir. 2003)

11) *Buise v. Hadkins,* 584 F.2d 223 (7th. Cir. 1978)

12) *Burnett,* 31 F.3d 815 - 16

13) *Davis v. Alaska,* 415 U.S. 308, 316, 94 S.Ct.1105(1974)

14) *Delaware v. Fenster,* 474 U.S. 15, 19, 106 S.Ct. 292 (1985)

15) *Estelle v. Gamble,* 429 U.S. 97, 97 S.Ct. 285 (1976)

16) Federal Jury Practice and Instruction, E. DeWitt, C. Blackman, & M. Wolff Section 103.23 (4th. Ed. 1987)

17) *Fonda v. Gray,* 707 F.2d. 435, 438 (9th. Cir. 1983)

18) *Frazier v. DuBois,* 922 F.2d 560, 56. -62 (10th. Cir. 1990)

19) *Garcia v. SUNY Health Science Ctr.,* 280 F.2d 98, 112 (2nd. Cir. 2001)

20) *Giano v. Senkowski,* 54 F.3d at 1057 (2nd. Cir. 1995)

21) *Gill v. Mooney,* 824 F. 2d. 1192, 194 (2nd. Cir. 1987)

22) *Gowins v. Greiner,* 2000 U.S. Dis Lexis 14098 (S.D.N.Y. July 31, 2002